

The purpose of this amendment is to address questions received by offerors, delete all references to interest, add additional FAR Clauses, provide changes page and request revised Volume IV: Price Proposal to Solicitation SP0600-01-R-0015

1. Offeror's questions/comments with Government response:

a). Allowability of Financing Costs: The principal issue that we wish to address relates to the ability of the contractor to have the costs associated with privately financing capital upgrades and renewals and replacements work under Section H.10 ("Accounting for Capital Upgrades/Purchase Price") recognized as allowable (and, therefore, chargeable) costs under the contract. As you are undoubtedly aware, FAR 31.205-20 ("Interest and Other Financial Costs") specifically provides that the costs of financing capital are unallowable. Accordingly, a contractor arguably would not be permitted to include an allocable portion of these significant expenses as part of its fixed monthly charge to the government under Sub-CLIN AB. Moreover, since Section B.6 and I.7 ("Price Redetermination-Prospective") expressly recognize only costs deemed "allowable" under FAR Part 31, such expenses could never be recoverable in future years after price redetermination. See also, provisions dealing with pricing modifications that also limit recovery to costs that are allowable under FAR Part 31: Section I.3, DFARS 252.243-7001 ("Pricing of Contract Modifications") and 252.243-7002 ("Requests for Equitable Adjustment"). Even the government's price realism analysis for award limits their inquiry to FAR Part 31 allowable costs. See Section M.4.6.1 ("Price Realism"). Finally, the contractor could not recover such expenses in the event of a termination for convenience, because termination costs are generally limited to those deemed allowable under the FAR cost principles. See Section I.2, 52.249-2.

We do not believe that the government intended to limit contractor's financing options or allocable expenses, particularly when the utilization of private financing could result in the lowest cost and best value to the government. In fact, your example for completing Schedule B-2 (Attachment J-40) appears to envision the recovery of such costs. We also believe that recognition of financing costs will encourage large numbers of lenders and contractors to avidly pursue this and subsequent RFP's for DOD utility system privatization. We also wish to note that there is precedent both within DOD and other executive agencies (notably, DOE) for expressly recognizing and allowing such expenses in privatization projects.

Modifying the Solicitation to expressly allow financing costs should not engender a significant effort by DOD. As recognized by Section B.2.2. and B.2.4.2., portions of this Solicitation are not subject to the FAR and, thus, DOD may not need to seek a deviation from the FAR to effectuate the revision. We believe that a clear statement in the RFP that, notwithstanding FAR Part 31 and any references thereto in this Solicitation, the costs of financing (including, but not limited to, interest expenses, legal and underwriting fees, breakage costs, etc.) are allowable under this procurement, may be sufficient.

We also believe that it is appropriate that capital invested in the project and any associated costs of financing be recoverable in the event of a termination for default. We are concerned that the lending community will not be willing to commit large amounts of capital unless they are assured that they will recover such investments and associated expenses in the event of a performance default for which they had no responsibility. Again, there is ample precedent both within DOD and DOE to permit lenders to obtain such relief.

Response: FAR 31.205-20, Interest and Other Financial Costs, states that "Interest on borrowings (however represented) . . . cost of financing and refinancing capital . . . are unallowable." We have revised the solicitation to remove all reference to interest as a separately priced component of the bid schedule. As stated in the Request for

Proposal (RFP), initial capital upgrades are Fixed Price (FP) and are not subject to re-determination. Competitive FP efforts are not subject to cost principles and will be evaluated utilizing price analysis. The cost principles also may not apply to offerors proposing a tariff subject to rate regulation. Offerors should revise their price proposals to reflect a single monthly recovery for each proposed capital upgrade in place of separately stated interest and principle. The cost principles may apply to price redetermination under Clause I.7.1.

b). Limiting Government Set-Off Rights: Lenders also will insist that they must be protected against government set offs of contractor debts and obligations against the contract, for claims that are unrelated to contractor performance under this procurement. For this reason, it is common that the government includes Alternative I to FAR 52.232-23 ("Assignment of Claims") that restricts the government's ability to set off against the contract for unrelated claims. Modifying the Solicitation to incorporate this provision will send a message to the lending community that the government is sensitive to their concerns and that this project is an attractive investment. Without such protection, lenders either will decline to participate or charge additional fees or higher rates to cover the set off risk - correspondingly increasing the government's costs for service.

Response: FAR clause 52.232-23, Assignment of Claims, Alternate I, is incorporated in this amendment.

c). Additional Revisions That Would Facilitate Financing: The following are other revisions to the solicitation that would greatly facilitate the attraction of less expensive private capital to the project, and correspondingly reduce the government's cost of service. These suggested changes have been adopted on other government privatization projects, including those for DOD.

First, with respect to termination for default, to protect their investment lenders typically want the ability to replace a contractor that is defaulting with a substitute contractor before an official default is issued ("step-in rights"), similar to the rights of a surety. Also, they want to retain title to the property whether there is a termination for default or for convenience, because it is the principal collateral for their loan. These options are not currently available under the standard termination provisions. Giving lenders these rights will eliminate their need to "reallocate" the risk of lost collateral (through higher costs) to the contractor, thereby reducing the government's ultimate cost for service. Similarly, lenders will want some priority of payment in the event of termination, at least to the extent that they would like to take payment precedence over the government for government claims arising out of contract performance.

Second, we need some clarification regarding clauses H-10 and I.7.1., ("Price Redetermination"), and we have a related suggested revision. Under Paragraph H.10.1 and H.10.2, the contractor is prevented from recovering the cost of capital upgrades until the upgrade is put into "useful service," requiring the contractor to carry those costs for a potentially prolonged period of time. We intend to accrue all construction-related interest costs while a capital upgrade task is being performed (these interest costs will be accrued on a monthly basis using market based interest rates). At the completion of the task, if the government decides not to pay for the task in a lump sum, we plan to finance the cost of the task, including accrued interest, and amortize it at a fixed rate over a fixed period of time (this fixed rate will be determined based on market rates at the time of a project's completion). We need clarification that the costs of accrued interest may be charged to the government in this manner and confirmation that this interest is allowed (see question A of this amendment).

Similarly, prohibiting any monthly charge price changes for the first two years of performance, as noted in Section I.7.1., and then effectively fixing the rates for three year periods after price redetermination mean that the contractor is more likely to obtain fixed rate financing, rather than financing with potentially lower cost., "floating" interest rates because it would have to bear the risk of rate "spikes" for the initial two year period and

for the subsequent three year "price redetermined" periods. We propose that the government permit an exception to the two-year price cap and for the fixed three year periods of price redetermination to allow for monthly charge modifications due to interest rate fluctuations.

Response: In respect to termination provisions, the FAR is clear as to the rights of both parties. The termination process is well defined with deliberate steps to resolving performance issues. At this time, it is not in the government's interest to deviate from the existing FAR coverage. In regard to retaining title to the property, the bill of sale will formally convey ownership of the utility system to the contractor. Upon the effective date of the bill of sale, the Air Force will no longer have an interest in the utility system, except that portion represented by the Right of Way. Finally, the government does not desire a variable cost on upgrades to the utility service. The requirement still remains for the contractor to propose a fixed price for upgrades to the existing utility system.

d). Recommended Addition of Limitations of Liability Clause: Because the contract is primarily for services, FAR 46.805(a)(4) would appear to require the inclusion of FAR 52.246-25 ("Limitation of Liability - Services (Feb 1997)"). The government would benefit from the incorporation of this clause because of a corresponding lower monthly service charge that results from a more equitable distribution of risk.

Response: The government has reconsidered this clause and believes it is not applicable to this effort. The services provided under the resulting contract are considered to be maintenance and rehabilitation of real property. The contract clauses prescribed under FAR 46.805 are not applicable to this type of contract.

e). Recommended Addition of "Force Majeure" Provision: Currently, the solicitation does not contain any clauses that clearly recognize that the contractor should not be liable for delays or a failure to perform that do not reach the level of a default, because of causes beyond its control and without its fault or negligence. We suggest that the Government add FAR 52.249-14 ("Excusable Delays") or equivalent language to recognize the absence of contractor liability in these circumstances. If you believe that there are clauses presently in the solicitation that provide such relief, please identify them for us.

Response: The government has reconsidered this clause and believes it is not applicable to this effort. This clause is used in cost reimbursement contracts. This is not a cost reimbursement contract. Delays resulting from causes beyond the contractor's control or without its fault or negligence can be handled through normal contract administration efforts. In addition, FAR clause 52.233-1, Disputes, gives contractors a mechanism for seeking relief concerning disputes relating to the contract.

f). Recommended Addition of "Differing Site Conditions" Clause: Similarly, the solicitation does not include any provision that clearly provides relief to the contractor in the event it encounters surface or subsurface conditions that differ from those indicated in the contract documents or those typically encountered in the area of performance. Since this contract will require a good deal of construction work, we suggest adding FAR 52.236-2 ("Differing Site Conditions") or equivalent language to clearly provide for equitable relief to the contractor in the event it encounters a differing site condition during performance. If you believe that the Solicitation presently provides for such relief, please identify such remedy-granting clauses for us.

Response: This clause is incorporated in this amendment.

2). The following changes are for the purpose of deleting all reference to interest and revising the corresponding areas of the RFP based on this change:

- (1) Page 5, Schedule B-2, Sub-CLINS AA, delete "...at an interest rate that is (specify either of the following) ____ percentage points above or ____ percentage points below the annual interest rate on U.S. Treasury Bonds in effect at the time of award." Also, delete subscript b at the bottom of the page "The interest rate on U.S. Treasury Bonds (30 years) is as established in the most recent 30 year bond issue prior to the time of award, and published in the Federal Register. (<http://www.federalreserve.gov/releases/H15/update/>)"
- (2) Page 6, Paragraph B.5.2. Service Charges, delete "...and at an annual interest rate."
- (3) Page 28, Paragraph H.10.1 Initial Capital Upgrades (ref. Paragraph C.11.2.2.1), delete "...at the term and interest rate..." and "...the applicable interest rate and the remaining principal."
- (4) Page 28, Paragraph H.10.2 Future Capital Upgrades (ref. C.11.2.2.2), delete "...the applicable interest rate and the remaining principal."
- (5) Page 28, Paragraph H.10.3 Recoverable Portion of the Purchase Price, delete "...at the term and interest rate..." and "...the applicable interest rate and the remaining principal."
- (6) Page 63, Schedule L-2, Capital Upgrades and Recoverable Portion of the Purchase Price, first paragraph, delete "...and the interest rate...". Second paragraph, delete "...and interest rate...".
- (7) Page 65, Schedule L-3, Schedule L-3, Additions to the Fixed Monthly Charge (i.e., variable monthly charges), Schedule B-2, SubCLIN AA, delete "... and at the annual interest rate...".
- (8) Page 76, paragraph M.4.6.3, Schedule B-2, Sub-CLIN AA Monthly Credit as Payment..... delete from second sentence.....annual interest rate.

Paragraph B.5 and B.5.1 Price Proposal

Schedule B-2 is amended to remove any references to interest. Prospective offerors shall complete Schedule B-2.

SCHEDULE B-2

Utility Service Payment by the Government

CLIN	Utility System			
_____	_____			
Sub-CLINS	SUPPLIES/SERVICES	UNIT	MONTHLY SERVICE CHARGE	TOTAL CONTRACT AMOUNT
AA	Monthly Credit as Payment for Purchase Price. Dollar amount shown shall include all applicable Taxes (see B.5.2.1, <i>Monthly Credit as Payment for Purchase Price</i>). \$_____ amortized over the first _____ months of service. ^{a,b}	MO	\$(_____)	\$(_____)
AB	Fixed Monthly Charge (see B.5.2.2, <i>Service Charges</i>) The Contractor shall provide utility service in accordance with Section C, <i>Descriptions, Specifications, and Work Statement</i> . ^{c, d}	MO	\$ _____	\$ _____
AC	Monthly Credit to the Government for Delayed Response Times When Servicing the Utility System. (See B.5.2.3, <i>Monthly Credit to the Government</i>) ^e . \$ _____/hour			

^a The Purchase Price (Sub-CLIN AA), and amortization schedule as proposed by the Offeror.

^b The total contract amount is calculated by multiplying the monthly service charge by number of months over which the purchase price is amortized.

^c The Offeror should enter the Fixed Monthly Charge, as computed in Schedule L-1. Additions to the Fixed Monthly Charge will be handled in accordance with Section H.10 and Schedule L-3, but should not be included in the price offered for Sub-CLIN AB.

^d The total contract amount is calculated by multiplying the monthly service charge by 600.

^e For proposal purposes the Offeror shall propose only a dollar per hour credit to the Government. During contract performance the hours per month will be determined for each month of service and the total monthly credit will be calculated and credited against the monthly invoice.

B.5.2 Service Charges

B.5.2.1 Sub-CLIN AA – Monthly Credit as Payment for the Purchase Price: The purchase price for the system shall be credited to the Government through a monthly credit against the fixed monthly charge. Monthly credits will be calculated by amortizing the purchase price over the number of months as proposed by the Offeror. The total contract amount is calculated by multiplying the monthly service charge by number of months over which the purchase price is amortized. After the time period proposed by the Offeror expires, this portion of the monthly fixed payment will be removed from the cash-flow projection. The price for each initial capital upgrade is **fixed** and is not subject to renegotiation under Clause I.7.1.

H.10 Accounting for Capital Upgrades/Purchase Price

H.10.1 Initial Capital Upgrades (ref. Paragraph C.11.2.2.1)

The price of each initial capital upgrade proposed by the offeror in Schedule L-3 of the Price Proposal will be added to the Fixed Monthly Charge, for the number of months indicated, when the upgrade is put in useful service. The Fixed Monthly Charge is the monthly service charge for the relevant utility system (the utility system of which the upgrade is a part) stated in Schedule B-2.

The price for each initial capital upgrade is **fixed** and is not subject to renegotiation under Clause I.7.1. The price for each upgrade will be amortized at the term proposed by the offeror in Schedule L-3 of the Price Proposal. With every monthly invoice that includes a request for payment for a capital upgrade identified in Schedule L-3, the Contractor shall submit an amortization schedule. The amortization schedule shall specify for each upgrade the additional monthly payment to be included in the Fixed Monthly Charge, the number of the payment (of the total payments required).

H.10.2 Future Capital Upgrades (ref. C.11.2.2.2)

Future capital upgrades for which the Government agrees to pay in accordance with Paragraph C11.2.2.2 will be added to the Fixed Monthly Charge for the number of months agreed upon when the upgrade is put in useful service. With every monthly invoice that includes a request for payment for such an upgrade, the contractor will include an amortization schedule. The amortization schedule shall specify for each upgrade the additional monthly payment included in the Fixed Monthly Charge, the number of the payment (of the total payments required).

H.10.3 Recoverable Portion of the Purchase Price

The recoverable portion of the utility system purchase price will be added to the Fixed Monthly Charge for the relevant utility system. The recoverable portion of the purchase price will be amortized at the term proposed by the offeror in Schedule L-3. With every monthly invoice that includes a request for payment of the recoverable portion of the purchase price, the contractor shall submit an amortization schedule which shall specify the additional monthly payment included in the Fixed Monthly Charge, the number of the payment (of the total payments required).

L.9.6 Detailed Instructions for Price Proposal, Section 2- Cost Proposal, Introduction and, Pricing Assumptions (See Schedule L-3)

Capital Upgrades and Recoverable Portion of the Purchase Price

The Offeror shall provide cost information for capital upgrades listed in the Capital Upgrades and Renewals and Replacements Plan provided in their proposal in accordance with C.11.2, *Capital Upgrades and Renewals and Replacements Plan*. Information to support the price proposed for capital upgrades shall include total upgrade price, estimated completion date, number of months the price will be amortized, as proposed by the Offeror. This information should be provided in Schedule L-3.

The recoverable portion of the purchase price is the portion of the purchase proposed for recovery by the Offeror. The dollar amount proposed must be between zero and 100 percent of the purchase price offered in Schedule B-2.

The proposed portion of the purchase price shall be amortized over the number of months as proposed by the Offeror. After the time period proposed by the Offeror expires, this portion of the monthly fixed payment will be removed from the cash-flow projection. This information should be provided in Schedule L-3.

A separate Schedule L-3 shall be provided for each utility system included in the proposal.

Schedule L-3 - Additions to the Fixed Monthly Charge

Component Name	Component Cost	Expected Month of Completion	Number of Months to Amortize Component	Monthly Charge
1. Initial Capital Upgrades				
Project 1				
Project 2				
Project n				
2. Recoverable Portion of Purchase Price		NA		

Section M

M.4.6.3 Comparison of offered Prices with the Government estimate

Schedule B-2

Each Sub-CLIN will be extended according to the following to arrive at an annual value:

Sub-CLIN AA – Monthly Credit as Payment for Purchase Price: (Amortization of the purchase price calculated as a monthly credit against the Fixed Monthly Charge of the utility service). Monthly amortization values will be calculated for the time period as proposed by the Offeror. The monthly rate will be multiplied by 12 months to reach the annual cost. After the time period proposed by the Offeror expires, this portion of the monthly fixed rate will be removed from the cash-flow projection.

3). Add the following FAR Clauses:

Section I.2 FAR Clause 52.232.23 Assignment of Claims ALT I (Apr 1984)

FAR Clause 52.236-2 Differing Site Conditions (Apr 1984)

4). In paragraph I.7.1., delete the statement “*(USER NOTE: Deviation – Pending approval from USD (AT&T)DP)*” and *(User note: Proposed deviation language, “This definition only applies to unregulated utility providers).*”

5). Attachment J-40 Example Completion Schedule B-2 is deleted. Attachment J-40 is marked **RESERVED**.

6). Section K, Representatives, Certifications, and Other Statements of Offerors. **(Offerors must complete and return with their initial offer.)**

a. Add paragraphs (a)(1)(i)(D) and (E) to Clause 52.209-5 and revise the effective date to read ‘**Apr 2001**’. Clause 52.209-5 now reads as follows:

52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (APR 2001)

(a) (1) The offeror certifies, to the best of its knowledge and belief, that--

(i) The offeror and/or any of its principals--

(A) Are [], are not [] presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have [] have not [], within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are [], are not [] presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

(D) Have [] have not [], within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(E) Are [] are not [] presently indicted for, or otherwise criminally or civilly charged by a government entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

(ii) The offeror has [], has not [], within a three-year period preceding this offer had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES, AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

(b) The offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the offeror's responsibility. Failure of the offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)

b. Clause 52.219-1/I/II, Small Business Program Representations (MAY 1999/NOV1999/NOV 1999), is deleted in its entirety and replaced by the following **Clause 52-219-1/I/II, Small Business Program Representations (OCT 2000):**

52.219-1/I/II SMALL BUSINESS PROGRAM REPRESENTATIONS (OCT 2000)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is **221122 (Electric Services), 221210 (Natural Gas Distribution), 221310 (Water Supply), and 221320 (Sewerage Systems).**

(2) The small business size standard is **4 Million Megawatt Hours for Electrical Services, 500 employees for Natural Gas Distribution, \$5.0 million for Water Supply, and \$5.0 million for Sewerage Systems.**

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) *Representations.* (1) The offeror represents as part of its offer that it

☐ is,

☐ is not

a small business concern.

(2) *[Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.]* The offeror represents, for general statistical purposes, that it

☐ is,

☐ is not

a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) *[Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.]* The offeror represents as part of its offer that it

- ☐ is,
☐ is not

a women-owned small business concern.

(4) *[Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.]* The offeror represents as part of its offer that it

- ☐ is,
☐ is not

a veteran-owned small business concern.

(5) *[Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.]* The offeror represents as part of its offer that it

- ☐ is,
☐ is not

a service-disabled veteran-owned small business concern.

(c) *Definitions.* As used in this provision--

"Service-disabled veteran-owned small business concern"--

(1) Means a small business concern--

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (a) of this provision.

"Veteran-owned small business concern" means a small business concern--

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern--

(1) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) *Notice.* (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall--

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

(6) *[Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.]* The offeror represents, as part of its offer, that-

(i) It

☐ is,

☐ is not

a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office of ownership, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It

☐ is,

☐ is not

a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (b)(6)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. *The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:*

Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(7) [Complete if offeror represented itself as disadvantaged in paragraph (b)(2) of this provision.] The offeror shall check the category in which its ownership falls:

_____ Black American.

_____ Hispanic American.

_____ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

_____ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

_____ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

_____ Individual/concern, other than one of the preceding.

(End of provision)

7). Section L, Instructions, Conditions, and Notices to Offerors

a. Under Paragraph L.4.4, Electronic Media, the second paragraph is hereby modified as follows to add additional wording regarding submission of electronic offers (additional wording in bold):

L.3.4 Electronic Media

Offeror shall submit their electronic proposals on CD ROM disks. All volumes shall be submitted on one CD. With the exception of the Price proposal, Offeror shall submit proposal files in the *Adobe* Portable Document File (PDF) format with a table of contents (roadmap) of the proposal structure. The Offeror shall provide appropriate *bookmarks* and *thumbnails*. The minimum requirement for hypertext link is a table of contents linked to each file provided in the proposal. Additional hypertext links within the proposal are at the Offeror's discretion.

The Price Volume shall be submitted in application-specific files developed and saved using the following versions of Microsoft software: *Word 97, Excel 97, PowerPoint 97, and Windows 95*. **Electronic proposal files should be no more than four megabytes (4MB) in size. Offerors are encouraged to refrain from incorporating detailed graphic items (other than any plans or drawings) as they are not required or desired. Any scanned documents incorporated into an offeror's proposal shall be split into multiple files so that each individual file is no more than 4MB. If multiple files are required for a given volume, offerors shall organize their electronic submission so that each volume is contained in a separate directory.** Each CD shall contain an electronic label, which is to be established on a CD when the CD is formatted. No password-protected, zipped, or self-extracting files shall be used.

Each Offeror shall provide virus-free CDs and shall certify that they are *virus free*. Be sure to identify appropriate markings such as the legend at FAR 52.215-1(e), *Restriction on Disclosure and Use of Data*.

- 8). All offerors are required to identify changes in the revised proposal.